

## **Minutes**

### **D.C. OFFICE OF EMPLOYEE APPEALS (OEA) BOARD MEETING**

Tuesday, July 22, 2014

Location: 1100 4<sup>th</sup> Street, SW, Suite 380E  
Washington, DC 20024

**Persons Present:** Lasheka Brown (OEA General Counsel), Sheila Barfield (OEA Executive Director), India Gray (OEA Paralegal), Emmanuel Catalan (OEA Intern), William (Bill) Persina (OEA Board Chair), Sheree Price (OEA Board Vice Chair – via telephone conference), A. Gilbert Douglass (OEA Board Member), Vera Abbott (OEA Board Member), Patricia Hobson Wilson (OEA Board Member), Adrienne Jillete (Member of the Public), Sharon Denise Jeffries (Member of the Public), and Velerie Jones-Coe (Member of the Public).

- I. Call to Order** – Bill Persina called the meeting to order at 11:10 a.m.
- II. Ascertainment of Quorum** - There was a quorum of Board members present for the office to conduct business.
- III. Adoption of Agenda** – Bill Persina motioned to adopt the Agenda. Gilbert Douglass seconded the motion. The Agenda was adopted by the Board.
- IV. Minutes from Previous Meeting** – The June 10, 2014 meeting minutes were reviewed. There were no corrections. The minutes were accepted.
- V. New Business**
  - A. Public Comments** – No members from the public offered comments.
  - B. Summary of Cases** – Bill Persina read the following summaries of each case to be decided by the Board:

- 1. Valerie Jones-Coe v. Department of Mental Health, OEA Matter No. 1601-0088-99C09R11** – The merits of this case were previously decided. Agency was ordered to reinstate Employee with back pay and benefits. The parties have been in administrative litigation dealing with compliance of the Initial Decision. The original AJ in this matter retired; therefore, the matter was reassigned to another AJ, who issued a Second Addendum Decision on Compliance. The AJ found that Agency was obligated to reimburse Employee with back-pay and benefits from January 6, 2003 to October 14, 2007. He then certified the matter to the OEA General Counsel for enforcement.

However, the OEA General Counsel issued an Order on Compliance which directed Agency to submit documents verifying that it had restored all of Employee's back pay and benefits from May 26, 2005 to October 14, 2007. Thus, the General Counsel's Order modified the back pay dates. In an effort to enforce compliance with the Second Addendum Decision, Employee also filed a Petition for Entry of Lien and Enforcement against Agency in the Superior Court for the District of Columbia. The court ruled that OEA

General Counsel acted outside her authority and ordered that Employee be reimbursed back-pay consistent with the Second Addendum Decision on Compliance. However, the District of Columbia Court of Appeals vacated the Superior Court decision and remanded the matter to OEA's highest administrative body for a declaration of the amount owed by the Agency.

An Initial Decision on Remand was subsequently issued by the OEA AJ. He ruled that Agency's partial payment for the period of May 25, 2005 through October 13, 2007, did not comply with the Second Addendum Decision on Compliance. Thus, he ordered Agency to make an additional payment to Employee for the period of January 6, 2003 - May 24, 2005. Agency then filed a Petition for the Office of Employee Appeals to Comply with the Remand Order from the District of Columbia Court of Appeals. Agency contends that a decision should have been issued by the OEA Board and not the AJ in this matter. Further, it argues that Employee did not submit medical documentation from her doctor that she was cleared to return to work prior to May 26, 2005. Thus, Agency believes that Employee is not entitled any more money than what she has already received. Employee submitted a motion to strike, arguing that Agency's filing was untimely. Employee also submitted an opposition to Agency's February 28, 2013 submission which provided that there was only a requirement for 'necessary documentation,' not documentation from her treating physician.

2. **Dale Jackson v. Department of Mental Health, OEA Matter No. 2401-0089-11** – Employee was a Motor Vehicle Operator with Agency and was separated from his position pursuant to a reduction-in force. He filed a Petition for Appeal with OEA arguing that Agency did not comply with Chapter 24 of the District Personnel Regulations. Agency explained that as the result of a budget reduction, it was compelled to eliminate Employee's position. Agency admitted that it retained co-workers of Employee who were less tenured; however, it did so in accordance with the regulations. In an Initial Decision, the AJ ruled that because Employee was within a single-person competitive level, Agency was not required to provide one round of lateral competition. Additionally, he found that Employee was provided with thirty days' notice of the RIF action. Therefore, the RIF action was upheld. Employee argues on Petition for Review that the AJ's decision was not based on substantial evidence because it failed to consider that Agency retained another employee who held the same position and was in the same competitive area as him. Agency filed its response to Employee's Petition for Review and reasoned that because Employee was in a single-person competitive level, it was not required to provide one round of lateral competition. Agency also submitted that Employee's arguments regarding the other employee within his competitive level was conjecture and unsupported by the Standard Form 50 and Retention Register.
3. **Sharon Jeffries v. D.C. Retirement Board, OEA Matter No. 2401-0073-11** – Employee worked as an Executive Legal Assistant with Agency and was

separated from her position pursuant to a reduction-in-force. Employee contested the RIF action and filed a Petition for Appeal arguing that she did not receive one round of lateral competition pursuant to the RIF procedures; Agency did not properly calculate her Service Computation date; and Agency did not provide her the option to be placed in a new position. In its response, Agency explained that Employee was provided the required thirty-day notice prior to the effective date of her separation. However, with regard to the requirement of one round of lateral competition, Agency provided that Employee was the sole person within her competitive area and competitive level. In the Initial Decision, the AJ ruled that since Employee occupied the only position within her competitive level, the requirement of one round of lateral competition was inapplicable. She also found that Employee was provided a written, thirty-day notice prior to the effective date of her separation. As a result, Agency's RIF action was upheld.

Employee then filed a Petition for Review with the OEA Board. She argues that the Initial Decision was based on an erroneous interpretation of statute, regulation, or policy, and it did not address all of the issues of law and fact raised in her appeal. She explains that she was improperly placed in a single-person competitive level; that there were three other Executive Assistants with whom she should have been able to compete; and that Agency failed to comply with the provisions of its Reemployment Priority Program. In response to Employee's allegations regarding the Reemployment Priority Program, Agency explained that her coverage under the program ended in March, 2013, and as a result, her reemployment benefit was invalid.

- 4. Leonard Cheeks v. Department of Public Works, OEA Matter No. 1601-0119-09R12** – Employee worked as a Motor Vehicle Operator with Agency. Employee was notified of Agency's decision to summarily remove from his position for testing positive for the presence of a controlled substance. He subsequently filed a Petition for Appeal arguing that the penalty of removal was too severe. Agency contended that the penalty of removal was appropriate because the offense was very serious and threatened Employee's ability to safely perform his job. Further, it provided that removal was within the range of penalties for the first offense of a positive drug test result. In his Initial Decision, the AJ found that during the Pre-hearing Conference, Employee conceded to testing positive for marijuana. As a result, he reasoned that Agency had cause to terminate Employee. The AJ concluded that based on Employee's actions, he was a danger to the safety of others, and therefore, summary removal was appropriate. Accordingly, the termination action was upheld.

Thereafter, Employee submitted a Petition for Review, arguing that the Initial Decision was not supported by substantial evidence and that the AJ did not consider his procedural and substantive arguments. He explained that neither he nor his representative had any recollection of conceding that he tested positive for marijuana, and the AJ failed to consider his evidence discrediting

Agency's position. In an Opinion and Order issued October 3, 2011, the OEA Board agreed with Employee and found that based on the record, it was not clear that Employee admitted to testing positive for marijuana. Accordingly, it ruled and that the AJ should have conducted an evidentiary hearing and remanded the matter to him for further proceedings.

In accordance with the Board's remand, the AJ held an evidentiary hearing and issued his Initial Decision on Remand. He considered Employee's assertions regarding the drug testing procedures but found that Agency's witnesses were more credible than Employee regarding this issue. Therefore, the AJ found that Agency met its burden of proving that Employee tested positive for marijuana, and it had cause for disciplining him. As for the appropriateness of the penalty for the offense, the AJ reiterated his previous conclusion that Agency's decision to terminate Employee was not an abuse of discretion. Accordingly, the removal action was upheld.

Employee filed a Petition for Review of the Initial Decision on Remand. He asserts that the decision is not supported by substantial evidence and does not properly address all of the issues of law and fact raised in the appeal. In response to the Petition for Review, Agency filed a Motion to Dismiss the Petition, arguing that the Petition for Review was untimely filed.

- 5. Dwayne Redmond v. Department of General Services, OEA Matter No. 1601-0203-12** – Employee was suspended for neglect of duty, insubordination, misfeasance, and unreasonable failure to assist a fellow government employee in carrying out assigned duties. He argued that Agency wrongfully suspended him. Agency asserted that it followed the factors outlined in *Douglas v. Veterans Administration*. The AJ issued her Initial Decision on February 5, 2014, wherein she dismissed the matter and ruled that Employee failed to prosecute the case because she failed to appear at a scheduled status conference and failed to respond to a Good Cause order. Employee filed a Motion to Reinstate Petition for Appeal, arguing that attached to his Petition for Appeal was a Designation of Representation form. However, the AJ never served his attorney with any of her orders. Employee provides that OEA cannot dismiss his appeal without properly providing notice and an opportunity to be heard. In response to the motion, Agency claims that Employee's counsel failed to state a legitimate claim for failing to appear at a scheduled pre-hearing conference. It relies on OEA 608.2 as evidence that Employee's counsel's lack of signature on the Designation of Representation form justifies why the petition should be denied.

**C. Deliberations** - After the summaries were provided, Patricia Hobson Wilson moved that the meeting be closed for deliberations. Gilbert Douglas seconded the motion. All Board members voted in favor of closing the meeting. Bill Persina stated that in accordance with D.C. Official Code § 2-575(b)(13), the meeting was closed for deliberations.

**D. Open Portion of Meeting Resumed**

**E. Final Votes** –Bill Persina provided that the Board considered all of the matters. The following represents the final votes for each case:

**1. Valerie Jones-Coe v. Department of Human Services**

MEMBER	GRANTED	DENIED	REMANDED	DEFERRED
Bill Persina		X		
Sheree Price	X			
Vera Abbott		X		
A. Gilbert Douglass	X			
Patricia Hobson Wilson	X			

Three Board Members voted in favor of granting Agency’s Petition for the Office of Employee Appeals to Comply with the Remand Order from the District of Columbia Court of Appeals. Two Board Members voted in favor of denying Agency’s Petition for the Office of Employee Appeals to Comply with the Remand Order from the District of Columbia Court of Appeals. Since there were at least three votes in favor of granting Agency’s Petition for the Office of Employee Appeals to Comply with the Remand Order from the District of Columbia Court of Appeals, the Petition was granted and the Second Addendum Decision was reversed.

**2. Dale Jackson v. Department of Mental Health**

MEMBER	GRANTED	DENIED	REMANDED	DEFERRED
Bill Persina	X			
Sheree Price	X			
Vera Abbott	X			
A. Gilbert Douglass	X			
Patricia Hobson Wilson	X			

All Board Members voted in favor of granting Employee’s Petition for Review. Accordingly, the matter was remanded to the Administrative Judge for further findings.

**3. Sharon Jeffries v. D.C. Retirement Board**

MEMBER	GRANTED	DENIED	REMANDED	DEFERRED
Bill Persina		X		
Sheree Price		X		
Vera Abbott		X		
A. Gilbert Douglass		X		
Patricia Hobson Wilson		X		

All Board Members voted in favor of denying Employee’s Petition for Review.

**4. Leonard Cheeks v. Department of the Public Works**

MEMBER	GRANTED	DENIED	REMANDED	DEFERRED
Bill Persina		X		
Sheree Price		X		
Vera Abbott		X		
A. Gilbert Douglass		X		
Patricia Hobson Wilson		X		

All Board Members voted in favor of denying Employee's Petition for Review.

**5. Dwayne Redmond v. Department of General Services**

MEMBER	GRANTED	DENIED	REMANDED	DEFERRED
Bill Persina	X			
Sheree Price	X			
Vera Abbott	X			
A. Gilbert Douglass	X			
Patricia Hobson Wilson	X			

All Board Members voted in favor of granting Employee's Petition for Review. Accordingly, the matter was remanded to the Administrative Judge for further findings.

**F. Public Comments** – Sharon Jeffries commented that she wanted to ensure that her petition was reviewed. She especially wanted to be sure that the matter regarding the Priority Re-employment Placement Program was considered. Ms. Jefferies noted her concerns with Agency's submissions regarding the Priority Re-employment Placement Program. Lastly, Ms. Jeffries inquired about the public's access to the Opinion and Order on Petition for Review.

**VI. Adjournment** – Gilbert Douglas moved that the meeting be adjourned; Vera Abbott seconded the motion. All members voted affirmatively to adjourn the meeting. Bill Persina adjourned the meeting at 12:55 p.m.

**Respectfully Submitted,**

**India Gray  
OEA Paralegal**